IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

INSURANCE APPEAL No.8 of 2003(A)

I.C.NO.10/1991 OF EMPLOYEES' INSURANCE COURT, KOLLAM

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APPELLANT/OPPOSITE PARTY NO.1:-

THE REGIONAL DIRECTOR, E.S.I.
CORPORATION, THRISSUR.

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENTS: APPLICANT & OPPOSITE PARTY NO.2:-

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1. SRI.P.VIJAYA CHANDRAN,
   MANAGING PARTNER, M/S. HOTEL SURYA,
   KANNANNELLOOR ROAD, KOTTIYAM.

2. DISTRICT COLLECTOR, KOLLAM.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

Insurance Appeal No.8 of 2003

Dated, this the 21st day of March, 2007

JUDGMENT

The Regional Director of Employees' State Insurance Corporation is the appellant. The appellant took steps to recover contribution from the 1st respondent. That order was challenged by the 1st respondent before the Employees' Insurance Court, Kollam. The E.I.Court upheld the contention of the 1st respondent that he is not liable to be covered under the Employees State Insurance Act. That order was challenged in M.F.A.No.1395 of 1993 before this Court. This Court set aside the order and remanded the case for fresh disposal. After remand, the E.I.Court allowed the application filed by the 1st respondent holding that the burden is on the appellant to prove that the employer had employed more than 10 or 20 employees, as the case may be. It was held that the appellant failed to prove that the employees in the Bar are working for the 1st respondent hotel. The E.I.Court took a view that the burden is on the Corporation to prove that the 1st respondent had employed more than the required employees.

2. In view of the principles laid down in **E.S.I.Corporation** v. **Hotel Amred** [1998 (1) KLT 786], that order is unsustainable. In that decision, a Division Bench of this Court has held that when the employer denies the liability or applicability of the provisions of the Act or the quantum, the employer has first to lead the evidence to prove his case. So, the Insurance Court went wrong in allowing the application filed by the 1st respondent on the mere ground that the appellant did not prove that in the hotel the 1st respondent was employing more than ten employees. The matter requires reconsideration. Considering the facts and circumstances of this case, I am of the view that one more opportunity can be given to the 1st respondent to prove that he had not employed more than the statutory number of employees at any point of time.

In the result, this appeal is allowed. The order passed by the Insurance Court on 2.1.2003 is hereby set aside. The case is remanded. E.I.Court is directed to take Insurance Case No.10 of 1991 back to file and dispose of the same afresh in accordance with law after giving both sides an opportunity to adduce further evidence, if any.

K.Padmanabhan Nair
Judge

vku/-